IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1169 of 1997

Date of decision: 7-7-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GABHUBHAI SEVABHAI KOLI

Versus

HASMUKHLAL KANJI

Appearance:

MR CB DASTOOR for Petitioners

MR KS JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/07/98

ORAL JUDGEMENT

With the consent of the learned counsel for the parties, name of respondent No.1 is ordered to be deleted from the first appeal.

2. Admit. Mr. Jhaveri waives service of the notice on behalf of respondent No.2. The appeal is taken up for final hearing with the consent of the learned counsel for the parties.

3. Being dissatisfied with the judgment and award of the Motor Accident Claims Tribunal (Main), Rajkot, District Rajkot, passed in M.A.C.T. No.772 of 1991 on 10th October, 1996 under which the claimants have been awarded compensation of Rs.25,000/with interest at 12% from the date of application till the date of payment, the original claimants have preferred this first appeal for enhanced compensation.

4. Learned counsel for the appellants contended that the Motor Accident Claims Tribunal (Main), Rajkot, has committed serious illegality in taking the monthly income of the deceased at Rs.350/- to Rs.450/-/- per month. It has next been contended that the multiplier of 5 which has been applied in this case is highly towards lower side. On the other hand the counsel for the respondents contended that in the present case, looking to the age of the deceased and the age of applicant No.1, the Tribunal has not committed any error in awarding compensation of Rs.25,000/- with interest. In the rejoinder, learned counsel for the appellants contended that even under section 140 of the Motor Vehicles Act, as amended in the year 1994, for no fault liability the amount of compensation provided is Rs.50,000/- in the case of fatal accident. So this amount ofRs.25,000/- which has been awarded is highly inadequate.

5. I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties.

6. Applicant No.1 has been examined before the M.A.C.T. as witness at Exh.26 and he made categorical statement that his wife was doing work of cleaning and filling water at the shops of merchants and she was earning about Rs.800/- per month. In the claim application the claimants have come up with the case that the deceased Sunderben was aged 56 years and was doing the work of cleaning shops and filling water and earning Rs.700 to Rs.800 per month. The claimants, no doubt,

have not produced any documentary evidence in support of their claim, and the learned Tribunal has not accepted the statement of the applicant No.1 regarding income of the deceased only on this ground. This approach of the Tribunal is erroneous on the face of it, for the reason, first, that there is evidence on record from the side of the applicants that the income of the deceased was about Rs.800/- per month which she was earning by doing work of cleaning shops and filling water. For this nature of work normally no documentary evidence may be available. Another reason is that the Tribunal has accepted the fact that the deceased lady was earning, but the earning figure was taken to be Rs.350 to Rs.450 per month. I fail to see how this imaginary figure has been taken by the Tribunal, more so when the evidence of claimant has not been controverted by other side. Either evidence has to be accepted or it should have been rejected altogether and in the later eventuality the income should have been taken to be zero. But the Tribunal has taken the income to be Rs.350 to Rs.450 without there being any evidence from other side. In the claim petition the income of the deceased lady was stated to be Rs.700 to Rs.800 per month, and in his statement claimant No.1 has given out the income to be Rs.800/-. So it is understandable if out of these two figures given in the claim petition and the statement the lower figure could have been accepted, but to hold that the income of Rs.350/- to Rs.450/- per month is based on no evidence. So taking into consideration totality of the facts of this case, income of the deceased is taken to be Rs.700/-per month.

7. The next question that arises is what multiplier should be adopted. The age of the deceased was stated to be 56 years. In the post mortem report her age is stated to be 58 years . Taking into consideration these two facts,the Tribunal has adopted multiplier of 5 in this case. Though the schedule which has been inserted in the Motor Vehicles Act 1988 is of the year 1994 and and it has no retrospective effect, but while deciding the matter after 1994 the Tribunal and this Court may takethe guiding factor from that schedule. It is true that in the post mortem report age of the deceased has been stated to be 58 years, but it may not be a conclusive document about the age of the deceased. The husband of the deceased has stated her age to be 56 years and he has given his own age as 65 years. The evidence given by the husband, without giving any reason, has not been accepted by the Tribunal. Medical evidence regarding age is not conclusive as it may be only an estimation. Age as assessed may vary by two to three years towards lower or higher side. Age of deceased as stated by the claimant

and that is stated in post mortem report is varying by two years; and the statement of the husband regarding age of his wife normaly would be accepted by the Tribunal. More so when other side has not produced any contrary evidence. So the age of the deceased is taken as 56 years on the date of her death. In Schedule II of the Motor Vehicles Act, 1988 (as amended in 1994), multiplier, in the case where the age of the deceased is between 55 years to 60 years, has to be taken as 8. So taking guidance from the Schedule, in this case multiplier of 8 is reasonable.

8. Now the next question is what should have been the figure of dependency benefit. If we go by the judgment of the Tribunal, on the income of Rs.350/- to Rs.450/- per month the dependency benefit is taken as Rs.250/-. When the income of the deceased is to be taken as Rs.700/- per month, dependency benefit may be taken as Rs.400/- per month. So the compensation under the head of loss of dependency benefit to the claimants should have been Rs.400 x 12 x 8 = Rs.38,400/-. The Applicants are entitled to enhanced amount of compensation under the head 'loss of dependency benefit' at Rs.23,400/- (Rs.38400 - Rs.15000). The applicants are also entitled to interest on the enhanced amount of compensation at the rate of 12% per annum from the date of filing of the application.

9. In the result this appeal is partly allowed as indicated above. It is held that the applicants are entitled to enhanced amount of compensation under the head 'loss of dependency benefit' at Rs.23,400/- together with interest at the rate of 12% per annum from the date of filing of application till payment. No order as to costs.

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